

DRAFT

MINUTES

Legislative Study Commission on Public-Private Partnerships

January 13, 2011, at 9:30 a.m.

**Room 1228/1327, Legislative Building
Co-Chairman Deborah Ross, presiding**

Chairman Deborah Ross called to order the third meeting of the Joint Legislative Commission on Public-Private Partnerships at 9:30 a.m. on Thursday, January 13, 2011. The following members of the Commission were present: Senator Clark Jenkins, Co-Chair; Senator Bob Rucho; Representative Becky Carney; Representative Bill McGee; Representative Joe Tolson; Ms. Angela Carmon; Mr. James N. Copeland; Mr. William J. Klein; Ms. Mary Nash Rusher; Ms. Gloria Shealey; and Mr. Richard E. Vick. A copy of the agenda and a roster of visitors to the meeting are available in the 1-13-2011 folder at the Commission's website: <http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>.

Chairman Ross asked for a motion to approve the minutes from the December 15, 2010, meeting; and Representative Carney so moved. The minutes were approved unanimously. A copy of the minutes is available in the 12-15-10 folder at the Commission's website: <http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>.

Chairman Ross reviewed the previous meetings. She said the first meeting was to define a Public-Private Partnership (PPP), and at the second meeting the Commission heard about actual experiences with PPPs. She said at this meeting the Commission would hear from the stakeholders here in North Carolina about their views on PPPs concerning contracting and financing. She said this goes a little toward Senator Rucho's question concerning some of the pitfalls the Commission should be looking for in considering legislation.

Chairman Ross introduced the first speaker, Mr. Vance Holloman, Deputy Treasurer, State and Local Finance Division, in the State Treasurer's Office, to talk about financing issues. A copy of his presentation is in the 1-13-2011 folder: <http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>.

Mr. Holloman said his division houses the staff of the Local Government Commission, which includes both a debt management area and a financial management section. He said there is a state debt section that oversees the issuance of debt by the state, prepares the debt affordability study, and serves as staff to the North Carolina Capital Facilities Finance Agency.

Mr. Holloman said it was difficult to define public-private partnerships; there is a variety of arrangements, so he said he would talk generally about the financing structures the Treasurer's Office has seen. He said it is a positive thing to be exploring opportunities to do things in a different way because there are great demands and all avenues should be looked at. Even though he would be talking in general, he said each situation should be looked at on an individual basis because even in the groups they have traditionally seen work, there may be projects that don't.

And in other less conventional arrangements there could be factors that make it very positive for the particular project. He said you have to look at each project on an individual basis and ask, “Is there something about this that is going to be beneficial to our unit of government? Are there benefits that are going to outweigh the future cash outlays we are going to have to make? Is this the way to get this accomplished? Is this something we want to do but may not be able to do without private involvement?” Mr. Holloman said you need to weigh the costs against the benefits.

Mr. Holloman said traditionally the forms of PPPs we have seen in North Carolina fall into a couple of different categories. 1) Governments invest in infrastructure such as streets, sidewalks, utilities, or transportation such as light rail to encourage economic development. 2) Governments enable private companies or non-profit organizations to issue tax-exempt bonds for certain public purposes and industrial projects. In this instance, the governmental entity is the issuer, but the borrower is a private business or non-profit entity. These two forms have worked well over the years because the financing is tax exempt in both cases, and access to the tax exempt debt market gives projects the best financing rates available and greatest opportunity for success. For instance, industrial revenue bonds will encourage development or will encourage industry to locate and gain access if they carry out certain functions that are allowed by our statutes to be financed in a tax-exempt way. In other cases, Mr. Holloman said it might be a borrowing by a private college or a private school.

Chairman Ross asked Mr. Holloman to give the standards a business might have to meet to get that industrial revenue bond, such as a wage standard, environmental standards, etc.

Mr. Holloman said one thing they look for, as far as the financing, is whether there is some type of assurance or feasibility for the project to make sure the debts will get repaid. Another thing is whether there is a rating attached to this company or entity that will be the borrower. If the debt cannot carry a rating, at one time there was a possibility of gaining insurance, but that is pretty much out now. Or, whether it is limited just to certain sophisticated buyers who understand the risks and will not publicly trade this to a buyer who does understand exactly what product they are getting. The Department of Commerce also has involvement, and they are looking at the ability to create positions and the wages that will be paid by those positions. Mr. Holloman said there are also permits that projects have to obtain, usually through the Department of Environment and Natural Resources. Depending on the project, there might be federal permits required. In summary before a project can be approved, Commerce must sign off, permits must be in place, and there must be some assurance that the project will be financially feasible so the folks who lend their money to the project can get assurances that they will be repaid.

Senator Rucho asked for specific examples of this practice in North Carolina with the government sector directly purchasing these things or through a private enterprise.

The chair called on Ms. Rusher for examples, and she said the industrial development bonds are limited by the federal statutes to \$10 million or less projects so they are typically small to medium-sized financing that have demonstrated that they will create jobs. They are available both for expanding existing industry as well as for new industry that is located here. She said

those were expanded for two years through the recovery zone bonds, which were sort of industrial development bonds without the \$10 million limit. She said an example that immediately came to mind was the Northeast Foods hamburger bun facility that is located in Clayton, which was financed with recovery zone facility bonds. She said Northeast Foods is entirely responsible for repaying that debt, but it allowed them to borrow at a more tax-efficient rate. She said there are many fashion facilities up and down Routes 40 and 70 that were financed since 1984 with tax-exempt bonds in North Carolina.

Mr. Holloman said in looking at situations where government invests in infrastructure, the financing can be done in a number of different ways, including general obligation bonds for extension of streets or utilities, for example. He said another way is using certificates of participation, or if it is small enough, a privately-placed installment purchase where the taxing power of the unit is not pledged but the asset itself, similar to a mortgage on a home or a lien on a car. He said another method is tax increment financings or project development financings as they are referred to in NC statutes. He said there is not a market for this type of debt right now because the interest rate would be too high to make the project feasible. In this type of financing he said you measure a tax value as of a particular date and the unit of government is not pledging taxes on that property; they are pledging the tax revenues generated from the development that occurs after the date that baseline is established. The idea there is that the project will stimulate economic development. As the tax values increase, they have pledged those incremental taxes to make those payments. He said a vote of the people is not required in that case; a vote was required to amend the constitution to permit that. In addition, he said the law does allow pledging of some other revenues, almost like a special purpose debt. For instance, a municipality would be able to pledge sales tax to support TIFs. This is also an area where you can do construction without having to go through the typical bidding process. Mr. Holloman said it was one of the few cases he was aware of where public monies can be expended without following the bid laws.

Mr. Holloman said a synthetic TIF is truly a certificate of participation where the asset stands; there is no pledge of taxing power either current assessed value or future growth of assessed value. But you have a plan for the government as to how they are going to repay the debt, and they believe by putting in improvements and making an investment in an area, the tax value will in fact grow, and they intend to pay that debt out of those additional taxes that are generated. It is very much like a TIF as far as the repayment goes, but the security is the asset itself. This has been used a couple of times in North Carolina.

Mr. Holloman said a new tool that has not yet been used is special assessment district revenue bonds. He said that legislation, which was passed a couple of sessions ago, allows a unit of government to issue debt to put traditional infrastructure, such as streets, sidewalks, or utilities in a development. At one time developers actually did this themselves and then very often donated them to the units of government; however, today with the tight credit markets and competition for financing, developers are having difficulty getting the loans for the traditional infrastructure. The owners of the property will ultimately pay for the infrastructure by having special assessments against that land; but there is access to a tax-exempt debt market, there is a lower rate of financing, the developer does not have to obtain the financing, and it does not limit what they can do with their development. It gives the lenders some belief or satisfaction that there is going to be infrastructure placed there that is going to help encourage the development of

this property. Through annual assessments the debt is paid; it is secured by the payment of those annual assessments similar to the way a revenue bond on a power plant is secured by the payments of monthly electric fees. The annual assessments are all the unit of government has pledged; they have not pledged their taxing power. They are expected to go through and make the efforts required by statute to collect those annual assessments for a period of up to thirty years. Although none of these have yet been issued in North Carolina, there have been problems with these in other states, particularly in Florida and Michigan. He said North Carolina is looking at this, and the Local Government Commission has adopted some policies as to when it might be appropriate. They are not typically for investment-grade projects. He said the Treasurer's Office wants to see some assurance of feasibility and some assurance that the lenders will get paid in North Carolina, and without an investment grade rating they don't want these to be simply publicly traded to anyone who does not understand the nature of the risk. With IRBs and other unrated debt they have had restrictions to certain sophisticated buyers, such as banks and other financial institutions, who would limit transfers among themselves.

Although there is not a market for special assessment district revenue bonds at this time, Mr. Holloman said there is an additional form of sophisticated buyer, a qualified institutional buyer, most often in the form of a mutual fund or high-yield governmental securities, and they will come in themselves and do a review of the project and determine that they believe it is going to pay out. He said the LGC has adopted a policy that if a qualified institutional buyer is willing to buy and hold these bonds, that they will accept that as finding a feasibility for the debt. He said they have also adopted a number of what they believe to be very conservative policies as to certain ratios, the amount that can be borrowed in this way to the value of the land. The question is whether there is a reasonable assurance that the debt will get paid if the development never pans out. The special assessments are second only to property taxes as far as their lien on the land, so there is a good assurance there. It boils down to whether the property is worth enough that someone will come in and pay that special assessment as opposed to losing the land and giving it up for public auction to pay off the assessment. By holding the amount they can borrow down to a low portion of the debt they are able to issue, you get assurances that they will not give up the property for a single year's assessment.

Mr. Holloman said his office believes that opening up this opportunity for special assessment district revenue bonds is a positive thing for North Carolina as long as they have conservative policies in place to avoid default because it is working well some other states.

Government can enable private entities to borrow at tax exempt rates. Mr. Holloman said another form of debt issued by a governmental entity to be repaid by a private entity is issued through county industrial facilities or pollution control financing authorities for certain types of projects. We also have the North Carolina Capital Facilities Financing Agency through which industries can borrow, if the project would impact more than a single county. They might also lend to private colleges, private schools, or charter schools, which by their nature are really are governmental entities but are not subject to the same borrowing requirements as our local government. There is the North Carolina Medical Care Commission that provides opportunities for private health care providers to gain access to the tax-exempt market.

The types of borrowers seen borrowing at tax-exempt rates are power companies, solid waste companies, pollution control companies, private schools and colleges, charter schools, private hospitals, retirement communities, and college foundations. Very often college foundations have constructed student housing with a kitchen and living room that is more in line with the demand today as opposed to “old East” styles.

Mr. Holloman said another form attempted in the past, not as successfully, has been a situation where the private entity actually incurred debt or provided financing and then the governmental entity purchased the asset through some type of lease or debt arrangement. Depending on how this is structured, he said it may be possible to avoid the bid law. If it is intended for a private entity ultimately to take ownership of this, it is a difficult and confusing area in the law. He said the capital lease for schools statutes were written with anticipation that perhaps in addition to construction of the asset, the private entity might manage a cafeteria, janitorial service, or other function. He said this is also seen in non-capital areas such as a small town trying to operate its water and sewage system or contracting out garbage collection. Often through a private contractor, Mr. Holloman said labor could be cheaper for a variety of reasons, and private industry might be able to deliver a service cheaper than government. He said you have to be certain that the quality standard for the building is still there, too. A building might be built at a lower cost simply because it is not as sound or intended to last as long as the traditional type.

There are some disadvantages of the private entity incurring the debt and selling the asset back to the government. Mr. Holloman said the biggest disadvantage is that the private companies cannot borrow as cheaply as a unit of government can; they don’t gain access to the tax-exempt market. The higher costs of borrowing must be passed on to the government.

He said he has also observed on occasion that this is considered something other than a debt instrument or other than an obligation or a commitment, and that leads to a different type of approval process for this type of obligation. It may be viewed as simply a lease or term availability payment and not really viewed as an obligation. But if government makes a commitment in order to obtain the title and right to own and operate a facility, and that commitment will take up X amount of the government’s revenues into the future, and its only alternative for getting out of that commitment is potentially giving up the asset itself, then that is a commitment of future resources, which gives the entity less budget flexibility.

Mr. Holloman mentioned some examples of government buying assets from private entities. One was the I485 project in Charlotte through the Department of Transportation. He said there was concern last year that that was going to involve what is characterized as availability payment for those assets. He said in any particular project, there will be a construction period during which there will be progress billings and things of that nature. What the Treasurer’s Office looked at as a commitment or debt financing obligation is what is beyond that normal course. There will also be a retainage, very often at the end of the project, held until all inspections can be done. He said they were looking at the situation where the contractor agrees to be paid for the project well after the normal payment cycle. That contractor is essentially lending so the state has a debt or obligation to pay for that project well after it is completed, and that is similar to a financing. Mr. Holloman said the problem is the contractor could never go out and

borrow as cheaply as the State of North Carolina can. He questioned, therefore, whether they would be accomplishing a positive change in doing it that way because a higher financing cost has to be passed on to the total cost. He said the folks at DOT may disagree, but to their credit on that project, they did all they could to minimize the amount that needed to be financed in that way, and it turned out to be only a couple of payments in years 2015 and 2016, and total payments were less than \$20 million. In this situation, it was really not the dollars that concerned his office; it was the breakdown on control.

Mr. Holloman said on other debts in North Carolina, the Legislature authorizes a particular project and authorizes an amount, but in this case a single agency is determining that they will enter into these contracts. It is not done through the General Assembly, and there is not a limit placed on those amounts.

In seeing some of the materials presented at other Commission meetings, Mr. Holloman said some folks have found this kind of arrangement a way to get a project done when they don't have debt capacity or an availability to enter into debt and otherwise could not get a project done. The Treasurer's Office does not think it is a sound way to manage things by saying, "We can't afford it at a lower cost, but we can afford it at a higher cost," simply by calling it something else.

Mr. Holloman said private companies constructed some of our state prisons. He said the state entered into lease arrangements for those and went back and refunded that debt because they discovered they could borrow and pay that debt off at a significant savings over those lease payments back to the private developer.

Build to suit capital lease for schools (G.S. 115C-532) was passed in 2006, and it has not been done yet although there have been numerous attempts to build schools in this way. He said, in his opinion, they could not overcome the access to the tax-exempt debt market in comparing the costs of constructing a school this way. He said he thought this would be repealed effective July 1, 2011. One thing often heard in discussion about this statute is the fact that the private entity building the school was still subject to the bidding law, and they felt that made it more difficult for them to do this in a cost effective way. There is the feeling that following the bidding laws takes a while, so there may be delays, and costs may go up during that period of time. Mr. Holloman said he didn't know if that was so much a problem now as it once was, because these are times when prices are low and people are willing to work with you on holding the bids.

Mr. Holloman said over the years he has observed that there has been reluctance from the Legislature to permit public dollars to be expended without some type of bidding. He said TIF financings and special assessments are the only methods he knew of where public monies can be expended without going through the bidding process.

In summary, Mr. Holloman said units of government were not able to obtain the savings anticipated with the build to suit capital lease for schools law to lead to their using this type of financing.

Senator Jenkins referred to the I495 project, which Mr. Holloman brought up. He asked if when the Board of Transportation votes to authorize a project, has it not obligated the State of North Carolina for that money right at that point? Is the Board of Transportation acting in behalf of the State of North Carolina in committing to pay a contractor X dollars to provide X service?

Mr. Holloman said, yes during the normal course of construction.

Senator Jenkins said that was not his question. He asked: Have they obligated the State of North Carolina to pay that check.

Mr. Holloman, said it was his understanding that they had.

Senator Jenkins said that all they were talking about then was what the terms of the payment were—not the amount of the payment. It was simply whether you pay it the day you get through and sweep up or whether you take some time to pay it.

Mr. Holloman agreed.

Senator Jenkins said then in talking about the debt cost Mr. Holloman was not being fair because if he evaluated what the project cost at the end of the day, he would find it came in under market. So all DOT did was negotiate some payment terms with the provider. They didn't borrow money or anything else because they had already obligated the State of North Carolina the day the Board of Transportation approved the project.

Mr. Holloman said his response to that would be that when you extend the payment out beyond the normal period, a private company does not have that kind of capital.

Mr. Jenkins said he didn't know that.

Mr. Holloman said he would be very surprised if they did. But even so, there is some cost of capital to a private company; there is no free lunch. So when you extend the payment period out for several years, there has to be some financing cost involved. And, that private company cannot obtain that financing cost at the same rate that the AAA-rated State of North Carolina could.

Senator Jenkins said Mr. Holloman was not taking into consideration that if the private contractor has a whole lot of yellow paint setting around, and if they decide they want to go to work, it is their decision to decide what they want to go to work for. And if the deal on the table is not to be paid on the day they finish but in installments, do you want the deal or do you not want the deal? He said that was up to the individual contractor to decide, and it was not up to anyone else to decide if the contractor has enough cash in the bank to do it.

Representative McGee said in regard to the interest paid to the debt holder, he said most of it would be North Carolina and federal tax free. He asked for the instances where it might only be North Carolina tax free.

Ms. Rusher said any time you are issuing tax-exempt debt, there are two sets of statutes to deal with. There is the state law authority to issue that debt, and there are some types of tax-exempt debt that you can do in other states that you cannot do in North Carolina because North Carolina does not have authorizing statutes. And you have federal tax exemptions. The flip of that is there are certain types of financings that state statutes permit, but there is not a federal bucket to put that in in order for that to be tax exempt. She said a good example might be an industrial development bond project that is larger than \$10 million. There is no \$10 million limit in North Carolina, but the federal statute passed in 1984 has a \$10 million limit. So she said she has done deals for a \$50 million project under the IBD statute where there is state law tax exemption but not a federal law tax exemption. Or sometimes there will be some of both.

Chairman Ross said her perception from Mr. Holloman's presentation was that North Carolina has some types of public-private partnerships that have been authorized by statute that haven't been used as much and that the Treasurer's Office is pretty conservative about other types of public-private partnerships. She asked if there were types of public-private partnerships, in terms of the financing models that have worked in other states, that we do not have in North Carolina law, that the Treasurer's Office feels comfortable with and the Commission might look at as other vehicles for this state.

Mr. Holloman said North Carolina's laws do permit a variety of different types of arrangements. He said the Treasurer's Office is concerned when there is financing involved. They want some assurances that the debt will, in fact, get paid. He said they feel that is part of their statutory responsibilities. But they also want to see that it is well managed; that, in fact, you are not incurring higher costs by going a different road and simply getting around some type of debt limits or debt authorization procedures. And he said there could also be concerns at the local level, too. But as far as additional statutes, Mr. Holloman said North Carolina has a number of things available to local governments, and he was not aware of anything in particular they should add.

Chairman Ross said she wanted to request that the Treasurer's Office look at this issue and see if there are other methods of financing that might be beneficial in North Carolina but do not pose the kinds of risks the Treasurer's Office is concerned about.

Senator Jenkins said along those lines, in the study bill at the end of last session, the General Assembly instructed the UNC School of Government to study other AAA states to see what their financing was and why other states, such as Georgia, seem to do more than North Carolina. He asked to see if they could find out from Ms. Norma Huston where they stand on that report so it could be shared at the next meeting.

Chairman Ross said she asked staff to check with Ms. Huston at the Institute of Government to see whether there are other types of financing. At the end of the last meeting, she said there was interest in looking at other kinds of financing without compromising the excellent bond rating of this state or incurring any serious financial risks at the local level.

Chairman Ross introduced Mr. Mark Foster, Chief Financial Officer for the Department of Transportation to talk about financing flexibility in P3s as they relate to transportation.

Mr. Foster said North Carolina's transportation needs have outpaced our transportation resources, and the Department is actively seeking new opportunities to address those economic challenges, not only to maintain our valuable asset as we have it today, but to position that asset for the future.

He said they are fighting an uphill battle, and as they look at their prioritized ten-year work plan, they have \$5 of prioritized transportation needs for every \$1 of available pay-as-you-go resources. They know they have to do something different.

Mr. Foster said he would highlight a few examples of what they are doing in that arena, with specifics on one project—the Mid-Currituck Bridge. He said P3 is not a new concept in transportation, nor is it innovative finance. He said the first transportation P3, the Philadelphia and Lancaster Turnpike, was done in 1782. He gave his favorite definition of innovative finance: “I don't have any money, do you?” has been around since the concept of currency and bartering. He said what is new is the level of sophistication that is coming to some of the deals.

He said there is no one concept of P3. It is a continuum of degrees of risk transfer and responsibility between the public and private sector. At one end is design-build, a fairly simple P3 that the DOT is utilizing that outsources the engineering and construction risks generally at a fixed price to the private sector, but DOT and the state retain ownership and future maintenance of that asset. In the middle are concessions where the private sector takes over operations and maintenance and participates in the financing. At the far end, he said you get into asset transfer and ownership. It is used both to build new assets and maintain existing assets or hybrid models. He said one important thing he wanted to point out is it is not just about the money. He said in DOT's opinion, the real value of P3s is the time savings, technology and expertise transfer, risk sharing, and the improved operating efficiencies that come with some of the partnerships.

Mr. Foster said DOT received legislative authority for P3s in Session Law 2006, and there have been three updates to that since then. He said they developed formal P3 policy and procedures in a ten-page document that their Board of Transportation adopted in 2009. He said it is very similar in language to a document that was prepared for the Turnpike Authority, but it also incorporates DOT's design-build policy and procedures as well.

Mr. Foster said active P3s in DOT include at the very simple end municipal agreements, of which they do 30 to 50 per month both with the public and private sector; and design-build and design-build-finance, to date 55 contracts either completed or actively underway and 14 currently advertised. An example is the Yadkin River Bridge, which was brought in at \$50 million under engineers' estimate. He said they will open the second piece of that in a couple of weeks. Another is the I485 Charlotte loop that was talked about earlier, and that project was accelerated seven years and brought in at \$130 million under engineers' estimates. Another is the Monroe Bypass Connector, a toll project, that financing is currently being worked out on, that was brought in \$100 million under engineers' estimate. He said timing is everything.

Mr. Foster said DOT has an Interstate Maintenance Pilot where they are outsourcing 135 miles of maintenance and division 10 covering I77, I85, I485, and I277; and they are measuring those results against other divisions like division 12. He said it is a five-year contract with a five-

year extension, and DOT will be monitoring the economics of that very closely and reporting on it. He said they also have an outsourced Visitor Center Pilot in Randolph County where Safety Concierge provides visitor information services for both the north and south bound visitors. He said the unique thing about that contract is that DOT put forth no money for those services. The contract allows the contractor to acquire sponsorships and to render leased private brochure display space and kiosks, which generates the revenue that pays for the people that provide the services to the citizens of the state.

Mr. Foster said they are also working in partnership with the Turnpike Authority on the Mid-Currituck Bridge. And, they are studying P3 potentials for I77 hot lanes, building the multi-modal Charlotte Gateway Station, expansion of I95, and the next phases of the Southeast High-Speed Rail Corridor as well as other modal opportunities around the state.

With the Mid-Currituck Bridge project, Mr. Foster said the Department of Transportation is learning quite a bit about delivering large-scale P3s as well as pre-development agreements. To discuss the Mid-Currituck Bridge in more detail, he introduced Mr. David Joyner, the Executive Director of the North Carolina Turnpike Authority.

Mr. Joyner's PowerPoint presentation is in the 1-13-2011 folder at the Commission website: <http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>.

Mr. Joyner said he would get into the Mid-Currituck Project because DOT thinks it is important for this Commission to have a good understanding of what they have learned, what their guiding principles were, and what some of their recommendations are to the Commission with regard to a transportation P3.

Mr. Joyner said when he first came to the Turnpike Authority (TA) about five years ago, a public-private partnership, as they were experiencing in Texas at that time with the Trans Texas Corridor, was viewed by a lot of people as a panacea. Unfortunately, higher costs of capital and all these other things come into play, and it really is not a panacea at all. He said it is a very valuable tool, but it takes the right project to make it work.

Mr. Joyner said the Mid-Currituck Bridge is located in the northeast corner of the state, and it will run from the small Town of Aydlett on 158 across the sound, and they have just about selected the northern route seen on the handout map as the preferred alternative. He said the project is seven miles long, and will be the longest bridge project in the history of the state—actually a little longer than the Virginia Dare Bridge. The cost estimate is \$550 million to \$625 million. He said DOT began environmental studies on this project back in 1995, and the Turnpike Authority took over the project when he joined the Authority in 2005. He said they expect construction to begin in approximately one year and open to traffic in 2015.

Mr. Joyner said the decision to use a P3 on this bridge came from three or four places. One, there was a statute fostered by the Legislature, which was the enabling legislation for the Turnpike Authority, that requested the Turnpike Authority to look at this project with the private sector. Therefore, they did that automatically. But when they began to think about the project they decided what they were looking for. He said they were very fortunate in being able to retain

some the best attorneys in the country who had done more P3 deals than any law firm in the country. They advised the TA that the financing would not be the secret to the project. They said risk mitigation would be where the Authority would benefit. They asked if it were not a benefit financially, did they really want to do it? They decided they needed to take advantage of the opportunity to learn something, so they went forward.

After getting into the project whole hog, Mr. Joyner said there are some very unique features about the project that make a P3 very attractive. One is the financing risk. As Mr. Holloman talked about, when you go to the markets you've got to have the best grade credit rating. You can't finance a project without it. Mr. Joyner said there was a lot of doubt about whether this project would get an investment grade credit rating: 1) Because of the high toll rates that would have to be put on a project of this size. 2) Because of the seasonality risk. Eighty percent of the revenue from this project is generated in the summer months, which is a serious risk. 3) High maintenance cost because of where this project is, and it has to survive 40-50 years. 4) Because of construction cost overruns. All of those factors made a P3 a good tool to look at.

As Mr. Joyner said, one of the things they wanted to do was learn something; so they asked their advisors and attorneys the best way to learn how to do a P3. They came up with a term that the Authority was not familiar with: PDAs—pre-development agreement with a contractor. A PDA allows the Authority to establish a contractual relationship with a potential builder of the project from day one, which means that contractor (developer) went through the legal process, the preliminary design and engineering, the traffic and revenue studies, and all the technology inputs that went into the project for the last three years. He said they did that PDA through a competitive bid process. They issued a request for qualifications, short listed it, and it was a state procurement competitively bid. Mr. Joyner said they picked a firm called ACS Dragados from Spain. (Dragados means bridge in Spanish.) He said it is the largest bridge building company in the world, and they think they got the best partner possible.

Mr. Joyner said they did the PDA, and the partnership provided opportunities for the TA to develop innovative ideas and fine tune the project. For example, one of the ideas that ACS Dragados brought to the table was that the first mile of the project on 158 until you get to the sound is over a dried-up swamp or wetland, and they said if you berm that one-mile section rather than bridge it, you can save \$40 million. And, if you build, use a construction method called "top- down construction" on the bridge, you can save \$80 million. Mr. Joyner said that was the kind of innovation they were looking for, and they found it in this firm. He said he was not saying they would be able to get the resource agencies to allow them to do that because they are still fighting over that, but nevertheless those kinds of ideas are being brought to the table, they are very valuable, and they are saving a lot of time and money with ACS as their partner.

Mr. Joyner said project feasibility is very real with a PDA and a public-private partnership. He said they won't know if this project is financially feasible for yet another month, but they are very close. If it is not feasible as a P3, then the TA is free to go out and rebid the project as a municipal financing or not build it at all.

Mr. Joyner said the TA is 45 to 50 days away from determining whether the project is financially feasible. After 15-16 years, the environment approvals are expected to be complete in

just a few months. He said next week they expect to have a LEDPA, which is the Least Environmentally Damaging and Practical Alternative; and they will begin negotiations, if the project is financially feasible, with their partner, who won the first right to negotiate the project back three years ago. He said they would sit down with them and begin drawing up a concession agreement. At that point, they will come to a determination as to whether the project is better as a P3 or whether it is better as a traditional municipal finance.

Mr. Joyner said the guiding principle that they have developed and learned is that the partner in your P3 has to put cash on the table. The state is putting up its share, and the equity partner is bringing approximately 20 percent or \$100 million in cash to the deal. He said that was very important to understand. In addition, he said they would negotiate the risk mitigation. He said it is hard to conceptually grasp because what risk do you have with a highway project? You have the money, you bid it, you build it, you maintain it. What's the risk? There is a lot of risk to a start-up toll project. It is purely business from start to finish. You go out and borrow the money, you build the business, you generate the revenue, you pay your debt. He said there are toll projects that are on the edge. A start-up toll project is risky. This deal will bring financial certainty to the table and allow them to offlay the risk of this project.

At the same time, Mr. Joyner said they have to protect the public interest. Therefore, they will retain a very meaningful role throughout the life of the concession. They will make sure the toll policies and rates are adhered to, that the construction standards are built to AASHTO and Federal Highway Administration standards, and the system integration system will work not only in that project but will work in all the projects they build throughout the state. He said there must be transparency in all operations of everything they are doing throughout the life of the project.

What is the public interest? Mr. Joyner said first it has to be a project that is of value to the locals. It's got to be of value to the citizens of North Carolina. Second, he said they have to offer excellent customer service and be able to provide that service at a reasonable rate. He said there will be some questions about whether the rate is reasonable, but this is an expensive project. The customer, however, is getting over an hour of time savings in the peak seasons, and most of the people who are using this service are going to a place on the Outer Banks that they are paying an awful lot of money to go to. Mr. Joyner said they do value of time analyses, and their toll is expected to be approximately one-fifth of what they estimate the value of time for people who will be staying on the Outer Banks. He said they think they have a good product and a good service to offer with no risk.

Mr. Joyner said they had to construct the most cost-effective project available, and they have to maintain transparency of the procurement and the operation records throughout the concession period. The process must be transparent, and all accounting and pricing has to be open book. The terms and conditions have to be fair and reasonable for the concessionaire. The final decision, however, of whether they go forward with the project, again, rests with the state, the Turnpike Authority, and DOT. And, the final concession agreement, which will take about 120 days to negotiate, must be approved by the Attorney General.

Mr. Joyner said the concession agreement will be a very large document that will address all the terms and conditions, which they will live with during the life of the project. He said to try

to imagine a lease deal for a \$500 million asset that is going to be 40 to 50 years in length. He said it is very hard to see out that far. He said you had better get it right, and they think they have the best team available because the people sitting on the other side of the table are going to have the best talent that they can hire. He said it has to be a rock solid concession agreement.

Mr. Joyner said the state would retain step-in rights to the project if any of the terms and conditions are not met on the project, and they will have remedies for any terms and conditions and any of the exit points of which they don't live up to the standards that are in that concession agreement. And, if the state steps in, they forfeit their equity, their \$100 million contribution.

Mr. Joyner went over a few myths about P3s. One is that there is a sentiment that if a project doesn't work as a municipal finance, you can take to the private sector, and they can make it work. He said that is not true. As Mr. Holloman said, the cost of capital is just too high. You can't make a good project out of a bad project financially.

Another myth is that the private sector can adjust tolls to cover the financing cost. There is a true diminishing law of returns that shows the maximum amount a customer is willing to pay before they will take the alternative and drive down to the Wright Memorial Bridge.

Mr. Joyner said some will say that the private sector can borrow incrementally, realizing huge cost savings on capitalized interest. He said that is true, but it is still not going to be enough to push a project from an unfeasible project to a feasible project.

Mr. Joyner said the optimal approach to project delivery depends on the public sector's risk tolerance. Early and sustained local teaming is critical. He said they have made numerous trips to Aydlett and Currituck County not just from environmental hearings, but to talk to the people about what they are doing to make sure that they understand why they are doing what they are doing. He said there is a huge sign down there near the Sanderling Inn that says, BUILD THE MID-CURRITUCK BRIDGE. He said they are real proud of that because it shows a lot of support for the project. He said, in his opinion, you could not build any P3 without strong local support.

Mr. Joyner said there is still a lot of institutional appetite for P3 deals. The money is out there. He said there are pension funds overseas, but in Europe most of their projects are built as P3s. He said their partner ACS is just getting their feet wet with P3s in this country, having just completed a deal in Fort Lauderdale on 595 where they brought eight or ten banks (they call them clubs) to the table. Nobody else could finance that project, but ACS was able to get it done. He said there is private capital out there looking for a place to park.

Again, Mr. Joyner said P3s can be excellent risk mitigation tools. He said one important thing to remember about P3s is the private sector will look not only at the downside risk; they will also look at the upside risk. It is very important. He said when you are in government you don't tend to look at upside potential. They will look at a project and run a "Monte Carlo simulation" saying, "What is the probability that this project will perform better than expected?" He said that is a new concept. He said they will risk some capital if they think there is a chance over that 40-year period that they might do better than expected. He said the state will have a

revenue sharing clause in the agreement. So if the project performs better than expected, the state will get its share.

Representative McGee asked who is assuming the currency exchange rate with the international company, and Mr. Joyner said it would be all domestic funding because they are heavily involved in the U. S.

Representative McGee said he assumed the 8 to 10 banks mentioned in the Florida project were from Europe. Mr. Joyner said he was not a financial expert and he was not sure exactly how they handled that transaction, but obviously they do the exchange rates and figure out how they can get the money in here.

Representative McGee asked if dealing internationally would put additional risks on the Treasury's Office for currency exchange rates? Mr. Joyner said they will go to the Local Government Commission for permission to sell bonds for the gap funds (called appropriation bonds). The rest of the financing is their debt and their risk and their obligation.

Senator Rucho asked of the \$550 million how much would actually be in design and construction of that bridge. Mr. Joyner said probably 65 percent of it, and the remainder would be operations and maintenance with a little bit of right of way.

Senator Rucho asked about environmental costs over the twenty years from the time of inception through the process of environmental approval to construction in another year or so. Mr. Joyner said the heavy environmental costs have been in the last three years, probably in the \$25 million to \$30 million range. He said that was not unusual for a project of this size. Western Wake spent at least that much as did Monroe.

Senator Rucho said he and Representative Tolson visited China a year ago and had the opportunity to view the construction of a 28-kilometer bridge over the ocean to an island. They were running out of room in Shanghai Harbor, and in nine years they actually designed and completed a bridge to a 60-pier port. And during that time, they phased in and were utilizing that facility. He asked if it wouldn't it be nice if we could reduce the time to half for significant cost savings.

Chairman Ross said she had been to China in the summertime and she could barely breathe because of environmental issues.

Ms. Rusher said Mr. Foster went through a very helpful list of the benefits from a PPP in addition to financing, time savings, technology and expertise. She wanted to be sure the Commission got that list. Mr. Foster said he would give her his notes, but that was not an all-inclusive list. He said what you find is that the partnerships bring innovation to the table, and innovation will hopefully take a project that under normal circumstances you couldn't do any other way and accelerate it to reality.

Chairman Ross introduced Mr. Ben Matthews, Director of School Support, Department of Public Instruction (DPI), to discuss North Carolina's experience with public-private partnerships.

Mr. Matthews said he had Mr. Steve Taynton, Architect and Section Chief of School Planning Section, with him. He said they are directed statutorily to review in DPI anything that is built legally on a public school property in North Carolina. It comes to their office to look at cost savings, energy efficiency, and structural integrity of the public schools being built in North Carolina.

Mr. Matthews said the agenda says they are to share their experience with public-private partnerships, but they don't have any because there haven't been any. He said back when G.S. 115-532 was passed several years ago, they were very closely related to the process of that in support of it because the one other thing they do in the Department is facilitate methodologies for the public schools to be sure they are aware of all potential financing methodologies for public school construction. For example, they manage the Qualified School Construction Bonds and Qualified Zone Academy Bonds, which are a federal program of either low or no interest bonds for public schools. He said they did that for the state public school bond, and should one of those occur, they generally serve as the mechanism to manage that.

He said anything he says is hypothetical, but he wanted to tell the Commission that DPI endorsed this process back several years ago because they thought, and still think, they have to find some alternative financing processes to build public schools in North Carolina. With the P3 scenario, regardless of how it is done, it comes back to the local board of education and the county commissioners to fund it. He said there has to be a mechanism of cash to flow to support that.

The only thing DPI can see rationally to reduce the cost of a project is to reduce the building quality. He said Mr. Holloman did a great job in talking about the dorms at the University; and DPI has advocates who say that when building a North Carolina public school, it should be built substantially to stand the test of time. Therefore, they don't advocate any ten-year kind of buildings.

Mr. Matthews said another thing that can be done to reduce costs is to reduce time, but then that opens the door to loss of oversight and loss of control.

Finally, reducing the space of an entity would save money, but DPI has problems with that because of the rate that North Carolina is growing right now. Mr. Matthews said to advocate making smaller spaces for kids seems to be counterproductive.

To reduce costs DPI would suggest allowing a developer to claim depreciation, claim exemption from property tax, claim energy solar tax credits, and maybe look at using an operational lease as opposed to a capital lease. By doing all of those things, however, he said you still might not be able to equalize overall cost. He said it's a tricky concept and very complex; and the bottom line is it goes back to the cities or counties to fund whatever is done.

Representative Tolson asked whether they had looked at other states that have done private financing, and Mr. Matthews said they had not. Chairman Ross said the Commission might do that.

Senator Jenkins asked if it were true that in other states the treasurer has allowed a certain part of the state employees retirement fund to participate in financing of school buildings. He thought less than five percent of the fund could be used for that, but it was a source of revenue. Mr. Matthews said based on his reading that was his understanding.

Ms. Shealey said Mr. Matthews had mentioned cost and time. She asked which was the priority for public schools. He said time is money. He said one of the things they have seen with the low and no interest bonds scenario, the construction costs have been down considerably, and the square footage costs have been down considerably. Mr. Steve Taynton from DPI said in their experience it has only been done in the very fast growing areas such as Wake County where they made the choice to sacrifice cost in order to get into the building quickly. He said there were a couple of cases where they went into existing buildings and renovated them. Even though the project cost more than starting from scratch, they were desperate to provide seats and that was the only option available. An average school system can plan ahead of time.

Mr. Taynton brought to the Commission's attention that this is the year for the five-year facility plan to come in, and the five-year projected needs for the state will be presented to the General Assembly in March.

Chairman Ross said there were eight people who requested to speak to the Commission, and she asked them to keep their remarks to between three and five minutes. She said some had decided to submit only written comments, which are available at the Commission's website: <http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>. Those written comments were submitted by Ms. Jane Smith Patterson, Executive Director of e-NC Authority; by the Department of Administration, and by the Office for Historically Underutilized Businesses.

Chairman Ross introduced Mr. David Crawford, North Carolina Executive Vice President with AIA North Carolina. Mr. Crawford furnished Commission members a written copy of his presentation, and it is available at the Commission website: <http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>.

Chairman Ross introduced the next speaker, Mr. Paul Meyer, Chief Legislative Counsel for the League of Municipalities.

Mr. Meyer said he would be brief because a lot of what the Commission had already heard was similar to what he would say. He said the biggest concerns the municipalities have in deciding whether to participate in PPPs are fears about the deals. They have no confidence that the public interest will be protected in the process. Their concerns include a fear of malfeasance or incompetence of the public partners; fear that the private sector cannot fulfill their financial commitments under whatever arrangements have been outlined, and the potential for higher overall costs in a PPP, and the potential for legal attacks. He said obviously local governments

do enter into these arrangement for such things as solid waste facilities, traditional parking decks to support a private investment, and sports arenas. He said these are usually complicated deals because people want assurance that the public's interest will be protected.

Mr. Meyer said they don't usually think of traditional public subsidy of private investment as a public-private partnership. When they think of PPPs they think of the public and the private both putting in and both getting something out of the transaction, so he thought there was some confusion in defining what PPPs actually are.

Mr. Meyer said they were asked what they would want to see in a bill that might come out of this committee. He said they would not want any mandates to enter into PPPs because each project takes on a life of its own. Second, they would not want a program where one size fits all, where if you are going to enter into a public-private partnership in this area, you must do it this way.

As to the question of what would make sense moving into the future, Mr. Meyer said before any kind of new program is put together in public-private partnerships, there would have to be some sort of clear demonstration that some of the fears outlined earlier would be met. Whether it is a local government public-private partnership arrangement or whether it is the state entering into a public-private partnership that affects local government, the League wants to make sure that the public interest is protected and that the private sector side didn't ultimately cost more. He said he was thinking in this regard of truly governmental functions that might be outsourced.

Chairman Ross introduced Mr. Dave Simpson with the Carolinas Association of General Contractors. Mr. Simpson furnished a written copy of his presentation, and it is available at the Commission website:

<http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>.

Chairman Ross introduced Mr. Kevin Leonard, Director of Governmental Relations for the North Carolina Association of County Commissioners.

Mr. Leonard said the Inter-Governmental Relations Steering Committee of their organization has a policy statement supporting public-private partnerships, and the best thing the Association can do at the state level is give local governments more tools in the tool box to let them be creative. The balance of that, he said, is protecting the public integrity in PPP projects using taxpayer dollars.

He said he did not hear the presentation about Virginia, but he understand that we have the LGC in North Carolina, unlike Virginia, and the relationship with the LGC is greatly enjoyed by counties and other local governments. He said they can work with the LGC to make sure that the integrity is protected.

On the school construction issue, Mr. Leonard said Senate Bill 209 passed in 2005, and Mr. Matthews said he didn't have any experience with that. He said the Association of County Commissioners would be very interested in working on that that legislation, re-authorizing it,

and figuring out how to get it to work. He said last session the General Assembly went to the base amount on some of the lottery funds that counties use for school construction. He said they utilized that money from the county level to support that debt. So as they continue conversations as to how they are going to fund school construction, it is vitally important to talk about this further. He said he understands that the Legislature is challenged with the budget, but he anticipates that the lottery discussion will come up again.

Chairman Ross introduced Mr. Jeff Strader, CFO, North Carolina State Ports Authority.

Mr. Strader said the Ports Authority does have some history with P3s. He said some of the more recent experience involves the construction of two woodchip export facilities, one at each of their facilities, that represents approximately \$11 million in private sector investment and public infrastructure. Both of those agreements have terminated, but during their operations they were very profitable for both the public and the private sector. And, because of conversion back to the public sector, they are now in business with other business ventures.

He said another more current example would be the Bulk Grain Import Facility at Wilmington, which is again a roughly \$11 million private sector investment, and that is in place to support the domestic hog and poultry industry here in North Carolina.

Mr. Strader said an example of an older and more extensive P3 experience with the Port Authority was the Bulk Phosphate Facility in Morehead City. He said construction of that operation dates back to the 60s and it will in the next decade celebrate fifty years of continuous operation.

He said all of the facilities were funded through the issuance of port revenue bonds. Each agreement structured essentially as a real estate transaction formulated around a ground lease and operating agreement with the facility itself. They each contain a number of guarantees to ensure payment of the debt and funding of operations and in return the private sector receives exclusive operation rights of those facilities.

In terms of what made these structures feasible, the General Assembly passed enabling legislation allowing the Ports Authority to issue debt and to hold real estate, and then certain tax code revisions from the IRS has allowed rules for private activity to be exempted for seaports and airports.

In terms of a recommendation or request, the Ports Authority simply urged the Commission to verbally review that model and the Turnpike Authority's enabling legislation that made it possible and consider implementing that in a statewide policy.

Chairman Ross introduced Mr. Thomas Crowder, member of the National Council of Architectural Registration Boards, a Councilman in Raleigh, and President of Architectural PA, which is small architectural practice.

Mr. Crowder said as a public official he understands the challenges state and local government face in these economic times with budget shortfalls, but he said he was addressing

the Commission as a Raleighite, North Carolinian, small business owner, and a registered architect. He said the issue of public-private partnerships is very important from the financing end; however, Senate Bill 822 does not address that, but more so the design-build delivery system. He said from the viewpoint of the brick sack or the qualification base for selecting designers, unfortunately design-build opens the door to bypassing the general statutes. Since small business is the backbone of North Carolina's and the nation's economy, he wanted to take a position for design professionals and the traditional design-bid-construction process, which provides small businesses and minority businesses and enterprises the assurances that they will receive a fair opportunity to participate in state and local government projects. He said in this time as the Governor and the Legislature and citizens call for more transparency and integrity in their government, it is just as important to maintain that transparency in the design and construction of our public facilities. The current design-build-bid, multi-prime, single-prime and CM at-risk delivery systems are well suited to ensure ensure that we have that transparency, integrity, better pricing and protection of the public health, safety and welfare.

Mr. Crowder said he participated in the public sector in a design-build process before, and not only does it create a monopoly for larger firms in the public sector, he thinks it puts a very undue process on design professionals. When you are not working directly for an owner, which is currently required in the general statutes, and you are working directly for a private manager, it is hard to serve two masters. There is a tremendous amount of influence being placed on that design professional to act on behalf of the financial interest of that entity and the owner and the safety of the public interest. From that perspective, Mr. Crowder thought the delivery systems currently in place have served this state and small business extremely well. As a public official, he said he hoped the Commission will continue discussions to look at ways to create financial vehicles to construct more facilities, especially where it is very pertinent for tax credits for historic properties or for alternative energy. However, he said it is not in the best interests of small business and the taxpayers when it comes to design-build delivery systems.

Chairman Ross introduced Mr. John Muter, President of New Atlantic Contracting.

Mr. Muter said New Atlantic Contracting is headquartered in Winston-Salem, and they do most of their work here in North Carolina. He said the bulk of their work is public construction work. He said his company does about \$100 million a year, so they are a mid-sized company.

Mr. Muter said he has participated in a number of P3s with school constructions and different legislations. He said they have had a difficult time getting any of those to work. He said the challenges have been represented, particularly by the representative from the Treasurer's Office, as it relates to cost. He said there is no real way to deliver a project less expensively by using this delivery method. He thinks people are saying the P3 is going to save money, but that is not true. He said it is faster, but you will give up some control as an owner and a public entity. He said there may be some benefits to that for the public owner, but he thought it was important that they understand that.

The proposals are very expensive. He said they had done both military proposals as well as public-private partnership proposals, and they are extremely expensive and will certainly have

an impact on smaller, local companies. Mr. Muter said at a time when construction dollars and work are desperately needed in North Carolina, he applauded the Commission for its efforts for trying to find them. He said he didn't know if PPPs are the answer. He said his company certainly supports any opportunity to bring more dollars to construction opportunities, and he thinks it is a way to get people back to work and to help the economy. He said he thought it was very important to focus on North Carolina-headquartered businesses, whether they are design firms or general contractors. The residual effect of that is that there will be a lot more local firms, subcontractors, and suppliers getting work so we can keep our dollars locally. He said he was not sure this delivery process would do that.

In closing, Mr. Muter said now is the time if there is any way. He said the Commission heard some of the savings on the DOT projects, and like the school facilities folks have said, it is a buyer's market, and it is not going to last forever. It is the time to buy.

Mr. Klein asked Mr. Muter if he would find part of the higher cost was because of the current path he had to follow through the law and financial concerns. If a roadmap had already been in place, wouldn't the cost to the entity have been less? Mr. Muter said they were building a lot of prototypes for Wake County Schools, and Wake County Schools was one of the public entities that came out and tried this. He said even in Wake's proposals, when you responded you had to send them a check for about \$5,000 for the first round, and you got shortlisted. The second round was like \$15,000. So if there were ten people shortlisted they got \$15 million (sic) to review their proposals. He said the problem was, they took one of those prototypes and it was around \$20 million for an elementary school. And the program was in this general area in Wake County, and they were to buy land there and give it to the group, and tell them what it was going to cost when you started construction in two and a half years. Mr. Muter said when he communicates that to the developer, he says, "I don't know what that land is going to be. I know that the worst case scenario for a project that we did in Wake County was \$5 million. That school had \$2.5 million of site cost, so I'm putting \$5 million in the site budget. And I don't know what costs are going to be so I'm going to add ten percent. So I just add in another \$2 million per year for two years to my construction. The only way to save anything would have been for us to share that risk with that owner and say, "We'll give you a price for that school based on today's dollars. If it goes up then the lease rate will go up," so there will be a sharing of that cost. Mr. Muter said that was not in the program because they were trying to mitigate that.

Mr. Muter said Charlotte had a big program, and they give the designers a book; and it is very specific on all the materials, so unless you change the quality of the materials or reduce the size and scopes of the building, you cannot lower the cost.

Chairman Ross introduced Mr. Henry Jones, who was representing the electrical and mechanical subcontractors.

Mr. Jones said he represented state associations of electrical, mechanical, and plumbing contractors. Since 2001 he said he had been urging the General Assembly to be very careful of the cutting-edge delivery systems that would be presented to all levels of government in the future—basically these negotiated project kinds of systems. He said we have some very good workable delivery systems that have worked many times in the past and have been very good for

North Carolina and for its contractors. He said the only guarantee that many of the local contractors have for these jobs is through the competitive bidding system. He said he wanted to speak in favor of the competitive bidding system, which will guarantee the local contractors an opportunity to get jobs.

Secondly, in terms of payment, Mr. Jones said one of the things near and dear to contractors, particularly further down through the tiers, is some form of guaranteed payment.

Mr. Jones said the problem with these public-private partnerships is if you have a private job in North Carolina, you have lien rights. In public jobs you have payment bonds. He said North Carolina has a hybrid system, and there is a question of whether it is a public or a private system. With it so complicated, many of the contractors don't know where they would stand in the process. If something like this is going to be done, he said please delineate whether these are public jobs or private jobs, and whether it is public property or private property so the contractors know whether they have lien rights or payment bonds. If it is going to be a public property, there should be payment performance bonds to guarantee payment. If it is going to be private property, it can still be delineated as a bondable job so that these people further down the tiers have some assurance of payment if everything else falls through.

Chairman Ross thanked all the speakers. She said it is important for the Commission to not just hear about the theories of public-private partnerships, but know what effect anything this Commission does will have on the stakeholders, the state, and our economy.

Chairman Ross called on Mr. Mark Bondo, Commission staff, to talk about what has gone wrong in other places, in response to Senator Rucho's question. She said there was a handout for Commission members from the PEW Center on one state's experience. That handout can be found at the Commission's website in the 1-13-2011 folder:
<http://www.ncleg.net/gascripts/documentsites/browsedocsite.asp?nid=121>.

Mr. Bondo said he was with the Fiscal Research Division of the General Assembly and in part handles the state's capital budget.

Mr. Bondo said there are some examples of failed public-private partnerships. He said his definition of a failure is a partnership that went bankrupt. He said there are examples of public-private partnerships that might not be politically popular, but that would not be an example of a failure in a sense.

Mr. Bondo said this is not an exhaustive list, but the ones he found are all in the transportation sector and are all fairly recent.

He said there is the South Bay Expressway, which is in Southern California, which recently entered into bankruptcy. It was a ten-mile toll road, and it was opened in 2007.

Another example is the Southern Connector, which is in Greenville, South Carolina. It was opened in 2001. It was a connector for I185 around Greenville. It was 60 miles long, and it went into bankruptcy in 2009-10.

And, finally, the Los Vegas Monorail, which is a 3.9 mile monorail in the City of Las Vegas. In 2010 that failed.

Mr. Bondo said the one question is what are the lessons learned from these failures, or why did they fail? From his research, the primary reason of why they failed centered around one commonality: extremely over-optimistic assumptions about how many people would ride the monorail or use the toll road. In some cases, they were fifty percent off. He said the economic collapse that our country and world has experienced could also have been a factor.

He said the South Bay Expressway was in the center of the housing bubble in Southern California; so when that demand dried up, they lost a lot of ridership. The Las Vegas Monorail saw a decline in revenues from conventions and tourists and lost a lot of their ridership. He said there were some questions, however, whether a person would have paid \$3 to \$5 to ride the Monorail between hotels or casinos. And, in the Southern Connector in Greenville, South Carolina, they had overly optimistic assumptions, and there was also a question of how it was designed. The actual toll road may not have served the most people or served them in such a way that it would generate the revenue, or provide a better option than taking another road.

Some of the lessons learned, which were presented at a conference Mr. Bondo attended, were that in the case of both the Southern Connector and the Los Vegas Monorail, something needed to be defined as to when one of these entities does fail, is it a public entity or is it a private entity? That would give a sense of what sort of bankruptcy protection and bankruptcy process it would actually have to go through. In South Carolina they wanted it to be a municipality, and in the other one they wanted it to file under a private company as a bankruptcy.

The PEW Handout gives another example of a failure that happened in Pennsylvania. That was a project that was supposed to be a public-private partnership, and it went through a certain amount of process and then it didn't eventually happen. It was the tolling of the I80 interstate through Pennsylvania.

Another example is in the City of Chicago. They entered into a long-term lease agreement with a company to manage their parking meters, and politically that is unpopular because parking meters have been raised to what the citizens of Chicago feel are substantially higher than what they had been paying. There has not, however, been any bankruptcy or failure. The City of Chicago did receive over a billion dollars for the long-term agreement. Mr. Bondo said he would not categorize that as a failure, but other people have.

The chair said there was still time for committee discussions. She said Senator Jenkins had to leave for another meeting, and they very much wanted to have one more meeting before the 2011 Session starts. She said they were thinking having a meeting on January 25th to devote entirely to Commission discussion and principles and parameters for any legislation that might be introduced. She asked the Commission members to say what they wanted to have on the agenda for discussion on January 25th. Chairman Ross said there was discussion with Senator Rucho and Representative McGee about finding a way with the new leadership to continue the work of the Commission maybe during the Session, or in some other way. She said the

Commission has captured a lot of information, but it is highly doubtful that there would be a bill that could automatically pop out of here on January 25th. She said both Senator Rucho and Representative McGee have been outstanding members who have attended every meeting, and the chairs are hopeful they can get the new leadership to allow the Commission to continue beyond January 25th. At the very least, she said that meeting needs to capture what this Commission thinks. She asked for thoughts and suggestions from Commission members for broad topics for discussion at the next meeting. She said her pick of topics are 1) financing, 2) whether North Carolina should do something like Virginia, and 3) if North Carolina should update the schools legislation before it expires.

Representative Carney said she favored having one of the topics be updating the schools legislation.

Representative Tolson said he hoped they would look at the positive public-private partnerships that have gone on in broadband because they have had some really good successes there, and maybe from that draw on how to establish other partnerships.

Chairman Ross said if there are any presentations at the next meeting, that would be a topic for a presentation. She said she did not want to have a lot of presentations, because the meetings have been presentation heavy, and time is needed for Commission input.

Representative said Ms. Jane Patterson's written presentation from e-NC is a good analysis, so he didn't think they would need another presentation. He just hoped the Commission would look at the successes that they have experienced and put them on the table as ways that can work.

Representative Carney said the Commission has had a wealth of information and some extremely talented public members on the Commission. She hoped there would be a discussion as to whether they want the state to move forward with more public-private partnerships, and if so, what direction do we go in?

Ms. Rusher said one of the things talked about is where there is a real gap of information in what sort of new and innovative financing techniques can be brought. She said she would be very interested in calling on the Institute of Government to see what they have gleaned from other states. She said there is a lot of expertise at the table and in the room, but she said everyone was interested in hearing what is happening in other places that we could take advantage of.

Chairman Ross said the Treasurer's Office has also been asked to take a look at that. She said it was a short turnaround, but the Institute of Government was charged with this task a while ago.

Mr. Vick said in these economic times that everyone is in, with deficits and lack of money to do anything, finding additional revenue to move forward has got to be the most important topic. Right now, he does not see necessarily that another vehicle would be a big solution. He does see a big solution in finding additional revenues.

Mr. Vick said the only other comment he would make is to at least keep in mind the North Carolina firms, the firms that have been here for generations. And make sure that the Commission does not structure anything that harms firms. He said he has not seen as many family-owned businesses in existence anywhere as he has seen in our state. And, he says the Commission needs to keep in mind open processes and transparency. He said his firm does a lot of design-build work, and he can echo the comments made that they are extremely expensive, which is well and fine if you get the job. But if you don't get the job, then you have spent a lot of money for not doing it. And, unsolicited proposals would be a detriment, in his opinion, to companies and also would lend a question of transparency and openness.

Ms. Carmon said she agreed that additional financing tools would be helpful.

Chairman Ross said what she was hearing from the Commission regarding the agenda for the next meeting, was that the Commission should get as much information as possible about additional financing tools from the Institute of Government and the Treasurer's Office. She said if anyone else runs across that information, please provide it to the staff. She said they heard from the Turnpike Authority that one of the additional financing tools that they were interested in was making sure that whoever the private entity is has some skin in the game—the financing tool is not just a revenue stream from users or a lease from the government. She said it might be good to look for other examples of that. She said they also had the School Construction bill as something to put on the table, and she would like to have a list of some of the suggestions made at this meeting and the other two meetings so when the Commission looks at it, they have the suggestions in front of them.

Chairman Ross asked whether there is interest in looking at the Virginia Design-Build Law. She said a lot of what the Commission has heard about it has been either we don't need it or if we do it, this is what we shouldn't do. She asked whether the Commission wanted to look at that at the next meeting or maybe make it the third thing looked at. She said they had heard concerns about it, and she wanted to know whether members thought it was something they should be moving forward with, or should they devote their attention to the other two issues.

Mr. Vick said his firm does not like the Virginia model, and he said the Commission needed to decide among themselves what direction they felt like they needed to go in, but he was not supportive of the Virginia law.

Ms. Shealey said they had heard a lot about design-build, but she did not consider that to be the intent of what the Commission is to be focused on as they look at how P3s can be used as another revenue source. She did not think they should focus on another delivery methodology but focus on how they use P3s to generate another revenue source #1, and where is it best applicable? She said she thought there were three different areas: transportation, education, and perhaps municipalities. How can it apply in those particular arenas effectively?

Senator Rucho said finding new ways to finance these projects are needed, whether they be transportation or school buildings or the like. He said it might not be under the direct purview of this Commission, but he said they did need to find a way of improving the efficiency of delivering these projects, such as finding some cost reductions, so they can afford the projects.

He said to do one without the other is really fruitless. He said they know they need them, they'd love to have them, but maybe they cannot afford them unless we find another way to reduce costs through regulation elimination or other ways. Otherwise, it might just be a wasteful bit of time.

Chairman Ross said in light of that, let's keep the issue on the table but make sure that concerns and things that North Carolina might not want, if going in that direction, are noted as Commission recommendations. She said she knew it was important to Senator Jenkins, too.

Representative Tolson said he did not see any broadband people at the meeting, and he wanted to make sure they were aware that broadband would be discussed at the meeting.

Chairman Ross said it was her understanding that Angie Bailey was present. Ms. Bailey stood and said was present from e-NC, but there were no broadband providers there.

Representative Tolson said he thought the reason for that was because they thought there was going to be a separate public-private partnership committee to discuss broadband, and that never materialized. He requested that they be made aware that it is being discussed and it is on the table as an issue.

Chairman Ross said the Commission staff would make them aware and they would also be invited to provide information to the Commission members in advance of the next meeting. She asked Ms. Bailey to also assist with that, if she could.

There being no further comments from the Commission members, the meeting was adjourned at 12:08 p.m. until January 25th.

Respectfully submitted,

Representative Deborah Ross, Presiding Co-Chair

Margie K. Penven, Committee Assistant